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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ANTHONY EUGENE LEWIS,

10 Petitioner,

11 v.

12 JEFFREY UTTRECHT,

13 Respondent.

Case No. C08-1239RSL

ORDER GRANTING MOTION  
FOR EXTENSION OF TIME;  
DENYING MOTION FOR A STAY;  
DENYING MOTION TO APPOINT  
COUNSEL

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16 This matter comes before the Court on petitioner's motion for extension of time to  
17 file a motion "for reconsideration of an order dismissing petitioner's habeas corpus with  
18 prejudice" (Dkt. #13) and on his motion to appoint counsel and to stay the proceedings  
19 pending reconsideration. Petitioner apparently believes that his petition was dismissed by  
20 the Report and Recommendation of the Honorable Mary Alice Theiler, United States  
21 Magistrate Judge. In fact, the Report and Recommendation merely recommended  
22 dismissal of his petition. The letter accompanying the Report and Recommendation  
23 explicitly stated that petitioner could file objections to the Report and Recommendation,  
24 but he has not done so.

25 The Court construes the motions as requests for an extension of time to file his

26 ORDER REGARDING  
PENDING MOTIONS - 1

1 objections. Despite his arguments to the contrary, petitioner's commitments in another  
2 case that he filed do not warrant an extension in this case. Moreover, the Report and  
3 Recommendation recommends dismissal based on a single, straightforward issue: the  
4 timeliness of petitioner's filing. However, petitioner also states that he had difficulty  
5 accessing the law library on one occasion and is currently in segregation. For these  
6 reasons, petitioner's motion for an extension (Dkt. #13) is GRANTED. The Court grants  
7 him a thirty-day extension. Petitioner must file any objections to the Report and  
8 Recommendation no later than January 26, 2009. The Clerk of the Court is directed to  
9 renote the Report and Recommendation (Dkt. #12) on the Court's calendar for January  
10 30, 2009.

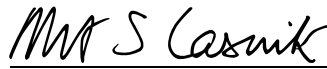
11 Petitioner's request to stay the proceedings pending the filing of a motion for  
12 reconsideration is DENIED (Dkt. #14). Because the Report and Recommendation is not  
13 a final order, no motion for reconsideration is warranted. Petitioner has been granted  
14 additional time to file his objections to the Report and Recommendation, so there is no  
15 need for a stay.

16 Petitioner also requests that the Court appoint counsel. There is no right to have  
17 counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing  
18 is required. See McCleskey v. Zant, 499 U.S. 467, 495 (1991); Rule 8(c) of the Rules  
19 Governing Section 2254 Proceedings for the United States District Courts. The Court  
20 may exercise its discretion to appoint counsel for a financially eligible individual where  
21 the "interests of justice so require" under 18 U.S.C. § 3006A. Whether counsel should be  
22 appointed turns on the petitioner's ability to articulate his or her claims in light of the  
23 complexity of the legal issues and the likelihood of success on the merits. See Weygandt  
24 v. Look, 718 F.2d 952, 954 (9<sup>th</sup> Cir. 1983).

25 Petitioner fails to demonstrate that the interests of justice would be best served by

1 appointment of counsel in this matter. As set forth in the Report and Recommendation,  
2 petitioner has not shown a likelihood of success on the merits. If the Court later orders an  
3 evidentiary hearing, the court will appoint counsel, assuming petitioner qualifies as  
4 indigent. Petitioner's motion for appointment of counsel (Dkt. #14) is DENIED.

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6 DATED this 5th day of January, 2009.

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9 Robert S. Lasnik  
10 United States District Judge  
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